REMARKS

Claims 1 through 8 and 10 through 17 are pending in this Application.[1] Claims 1 through 5, 8, and 10 through 13 have been amended, claim 9 cancelled and claim 17 added replacing cancelled claim 9. Care has been exercised to avoid the introduction of new matter. Adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure noting, for example, Figs. 1 and 4A, and the related discussion thereof in the written description of the specification. Applicant submits that the present Amendment does not generate any new matter issue.

Clarification of Record.

In the June 26, 2006 Office Action, the Examiner acknowledged receipt of the Information Disclosure Statement (IDS) and provided a copy of Form PTO-1449 wherein only the foreign patent document was initialed. However, the box opposite the publication "LIQUID CRYSTAL HIGH POLYMER" by Sigma Corporation was not initialed.

Accordingly, Applicant requests the Examiner to clarify the record by providing an appropriately initialed copy of Form PTO-1449 indicating consideration of each of the cited references, including the Sigma Corporation publication.

Claim Objections.

The Examiner objected to claims 5 through 20 (presumably intending 5 through 16) as improperly dependent upon a multiple dependent claim. This objection is traversed.

[1] In the Office Action Summary, the Examiner inaccurately indicated that claims 1 through 20 are pending.

Initially, the present Amendment addresses the multiple dependency issue where appropriate. However, claim 9 was an independent claim, not a dependent claim. Further, original claims 6 and 7 are not multiple dependent claims and, hence, may properly depend from a multiple dependent claim, as may claims 14 and 15.

Based upon the foregoing Applicant solicits withdrawal of the claim objections.

Claims 1 through 4 were rejected under 35 U.S.C. § 102 for lack of novelty as evidenced by Mori et al.

In the statement of the rejection the Examiner asserted that Mori et al. disclose an optical pickup device corresponding to that claimed, and referred to various portions of the patent text. This rejection is traversed.

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the recognized possession of one having ordinary skill in the art. *Dayco Prods., Inc. v. Total Containment, Inc., 329 F.3d 1358, 66 USPQ2d 1801 (Fed. Cir. 2003); Crown Operations International Ltd. v. Solutia Inc., 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002).* There are fundamental differences between the claimed optical pickup device and the device disclosed by Mori et al. that scotch the factual determination that Mori et al. disclose an optical pickup device identically corresponding to that claimed.

Specifically, the claimed optical pickup device detects a spherical aberration and corrects that spherical aberration all while the laser light is in an **on-focus state**. The spherical aberration stems from a thickness error of an intermediate layer. On this point Mori et al. are silent.

Accordingly, the present Amendment clarifies this distinction by including components to maintain an on-focus state and by clarifying that the lens for converging reflection light from the disk when a thickness error in the intermediate layer occurs and the photodetector that receives the converged light detect a physical aberration when the laser light is in an on-focus state, and that the diffusion angle converter corrects the spherical aberration when the laser light is in an on-focus state.

The bottom line is that Mori et al. neither disclose nor suggest the notion of detecting and correcting a spherical aberration when the laser light is in an on-focus state. This fundamental difference between the claimed invention and Mori et al. undermines the factual determination that Mori et al. disclose an optical pickup device identically corresponding to that claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc., 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986).*

Applicant, therefore, submits that the imposed rejection of claims 1 through 4 under 35 U.S.C. § 102 for lack of novelty as evidenced by Mori et al. is not factually viable and, hence, solicits withdrawal thereof.

Claims 5 through 8, 10 through 16 and new claim 17.

Claims 5 through 8, 10 through 16 and new claim 17 are clearly free of the applied prior art for reasons which should be apparent from the arguments advanced in traversing the imposed rejection of claim 1 under 35 U.S.C. § 102 for lack of novelty as evidenced by Mori et al. Specifically, claims 5 through 8 depend ultimately from independent claim 1.

Claim 17, which replaced claim 9, contains features which distinguish the claimed device over that disclosed by Mori et al., which features require detecting a spherical aberration and correcting that spherical aberration while the laser light is in an on-focus state. Claims 10 through 16 depend from claim 17.

Based upon the foregoing it should be apparent that the imposed objection and rejections have been overcome, and that all pending claims are in condition for immediate allowance. Favorable consideration is, therefore, solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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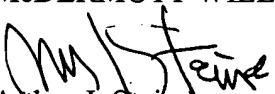

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